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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/138 /2009 - EX[DB] Date 12/05/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S MALWA INDUSTRIES LTD.
VILLAGE-HARIAN KOHARA, MACHHIWARA ROAD,
LUDHIANA (PB)
M/S MALWA INDUSTRIES LTD. Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 308/2009- **EX[DB]** dated 5-5-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. LUDHIANA
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult SH. ATUL GUPTA, CON.
   JAGMOHAN BANSAL,
   1640/1, SECTOR-40-B, CHANDIGARH
3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:5.5.2009

Central Excise Appeal No.138 of 2009

Arising out of the order in appeal No.360/CE/LDH/2008 dated 5.11.2008 passed by the Commissioner (Appeals), Customs & Central ,Excise , Chandigarh.

For Approval and Signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Malwa Industries Ltd. .... Appellant

Vs.

C.C.E., Ludhiana ... Respondent

Appearance:

Shri Atul Gupta, Company Secretary for the appellants and
Shri B.S. Suhag, , Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

FINAL Oral Order No. 308/09-EX

Per Shri Justice R.M.S. Khandeparkar:

In the peculiar facts of this case which reveal compliance of the order which was passed by the Commissioner (Appeals) under Section 35F, in our considered opinion, no purpose would be served in keeping the appeal pending, therefore, the appeal was taken up for final hearing immediately after filing of the statement by the learned Advocate for the appellant about due compliance of the order dated 23rd February, 2009 in Stay Application No.151 of 2009 in this Tribunal.

2. The appellants were directed to deposit a sum of Rs.5 lakhs towards duty amount and a sum of Rs.5 lakhs towards penalty by the Commissioner (Appeals) under his order dated 23.9.08 in stay application filed in Appeal No.164/08 before the said authority. On account of failure to comply with the said order, the Commissioner (Appeals) vide his order dated 5th November 2008 dismissed the appeal. The dismissal order specifically recorded that appeal was being dismissed for non-compliance of the provisions of Section 35F. The appellant thereafter filed the present appeal along with stay application for stay of the impugned order and waiver of pre-deposit and this Tribunal vide order dated 23.2.2009 in Stay Application No.151/2009 while recording the fact that the appellant has already reversed the credit to the tune of Rs.5 lakhs directed the appellant to further reverse the credit to the tune of Rs.5,64,278/-. The ~~appeal~~ application filed today discloses that the appellant has complied with the stay order.

3. In the facts and circumstances of the case, therefore, the order of the Commissioner (Appeals) under Section 35F substantially stands complied with by the appellant. However, since the appeal before the Commissioner (Appeals) was not disposed of on merits but merely for non-compliance of the obligation under Section 35F, in our considered opinion, it would be appropriate to set aside the impugned order and the matter is remanded to Commissioner (Appeals) to deal with on merits in accordance with the provisions law. Needless to say that in view of compliance of the order dated 23.2.2009 in Stay Application No.151/2009 in this Tribunal, the Commissioner (Appeals) is not required to insist on any further deposit of the amount of duty or penalty.

4. In the result, therefore, the matter is remanded to Commissioner (Appeals) to decide the appeal on merits without insisting on any pre-deposit in the said appeal. The appeal accordingly, stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)